Editor's note: Reconsideration denied by order dated Nov. 13, 1981; Appealed -- aff'd, Civ. No. A77-66 (D.Alaska Jan. 9, 1981), 504 F.Supp. 1216, aff'd, No. 81-3120 (9th Cir. Feb. 7, 1983), 698 F.2d 987 cert. denied, S.Ct. No. 82-1807 (Oct. 3, 1983), 104 S.Ct. 73, 464 U.S. 816

ALBERT SHIELDS, SR.

IBLA 76-42 Decided January 5, 1976

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for allotment pursuant to the Alaska Native Allotment Act, AA 7736.

Affirmed.

1. Alaska: Native Allotments

Where an applicant for an allotment pursuant to the Alaska Native Allotment Act did not occupy the land prior to its inclusion in a national forest, and the land is found not to be chiefly valuable for agricultural or grazing purposes by the authorized officer, the application will be rejected.

APPEARANCES: John Silko, Esq., Alaska Legal Services Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Albert Shields, Sr., appeals from the June 4, 1975, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his application for an allotment pursuant to the Alaska Native Allotment Act, 34 Stat. 197, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

[1] There is no doubt that appellant has occupied the land for the requisite period of time. Two employees of the BLM stated after a field report that the appellant described his use of the tract and the physical layout of the tract in precise detail. They further stated:

I examined this case and believe the applicant has used the subject land and if any native of Alaska

deserves an allotment, Albert Shields, Sr. does. [Emphasis in original.]

Therefore, there is no doubt that appellant's bona fides are beyond question.

Unfortunately, the law was so framed that appellant's use does not qualify him for an allotment. The pertinent statute provided:

> Allotments in national forests may be made under sections 270-1 to 270-3 of this title if founded on occupancy of the land prior to the establishment of the particular forest or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes. (May 17, 1906, ch. 2469, § 2, as added Aug. 2, 1956, ch. 891, § 1(e), 70 Stat. 954[, 43 U.S.C. § 270-2 (1973)].)

The land on which appellant's allotment is located lies within the Tongass National forest which was created in 1909 several years before appellant's birth. Furthermore, a letter from the Regional Forester, dated July 10, 1974, indicates that the land is not chiefly valuable for agricultural or grazing purposes. In such cases the land is not subject to allotment. 43 CFR 2561.0-8(c).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Edward W. Stuebing
Administrative Judge

We concur:

_____
Anne Poindexter Lewis
Administrative Judge

_____
Frederick Fishman
Administrative Judge